



4191-02U

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 408, and 416

[Docket No. SSA-2020-0045]

RIN 0960-AI51

Waiver of Recovery of Certain Overpayment Debts Accruing During the COVID-19
Pandemic Period

AGENCY: Social Security Administration.

ACTION: Interim final rule; request for comments.

SUMMARY: We are issuing this interim final rule with request for comments to revise our regulations on how we waive the recovery of certain overpayment debts. We will apply this interim final rule when an affected beneficiary requests waiver of certain overpayment debts that accrued during a portion of the COVID-19 pandemic period. Under this rule, we may waive recovery of these overpayment debts using a streamlined internal process. Since the overpayment debts at issue occurred because of the circumstances surrounding the COVID-19 national public health emergency, we can assume that these debts are not the fault of the affected beneficiaries due directly to our strategic decision to reprioritize workloads to stop manually processing certain actions, and it would be against equity and good conscience to collect them. In particular, qualifying overpayment debts include those incurred between March 1 to September 30, 2020 that we did not manually process as a result of our cession of certain activities, and that we identified by December 31. We expect that this interim final rule will allow us to

maintain effective stewardship of the Social Security programs, while simultaneously ensuring that affected beneficiaries are not disadvantaged by our actions during this unprecedented national public health emergency.

DATES: *Effective date:* This interim final rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Comment date: We invite written comments. Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2020-0045 so that we may associate your comments with the correct rule.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the search function to find docket number SSA-2020-0045. The system will issue a

tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comments to be viewable.

2. Fax: Fax comments to (410) 966–2830.

3. Mail: Mail your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified in FOR FURTHER INFORMATION CONTACT.

FOR FURTHER INFORMATION CONTACT: Edward Sosar, Office of Regulations and Reports Clearance, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-2341. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

Beginning on March 17, 2020, we took unprecedented measures to protect both the public and our employees during the COVID-19 national public health emergency. These measures included closing our more than 1,200 field offices to in-person service, maximizing our employees' use of telework, and reprioritizing certain manual workloads to stop actions that could, under normal circumstances, have resulted in a reduction, suspension, or termination of benefits or payments under titles II, VIII, or XVI of the Social Security Act (Act).

For example, we suspended the completion of title XVI redeterminations, a periodic review of an individual's or couple's non-medical eligibility factors such as income, resources, and living arrangement, during which our staff ensures that a recipient or couple is still eligible for Supplemental Security Income (SSI) payments and is receiving the correct amount of SSI payments.¹ Moreover, in some instances, we may have had information in our files to indicate an individual's benefits or payments may not have been correct, but we did not take action on that information to protect beneficiaries' income and healthcare coverage during the COVID-19 pandemic period². Because we suspended certain actions due to the pandemic, we did not establish some overpayment debts as timely as we would have if our offices had been operating normally. We note that we would have processed manually the debts impacted by this action. Due to our focus on prioritizing other more urgent workloads and reducing stress on the people we serve during the beginning of the pandemic, we did not take action on these types of

¹ See 20 CFR 416.204.

² For the purposes of this rule, whenever we cite the "pandemic period," we are referring only to the established period of March 1, 2020 through September 30, 2020.

overpayment debts. For example, some of these overpayment debts consist of routine monthly reports of changes such as income, resources, and living arrangements that would otherwise result in a reduction, suspension, or termination of benefits. Under normal circumstances, the agency would manually process the changes and benefits would be timely reduced. However, by holding these periodic reports of changes, we have created overpayments within the pandemic period, and therefore the resulting overpayment debts are subject to relief under this interim final rule.

In contrast, overpayment debts that we identified through our automated processes, such as computer interfaces with the Department of Veteran Affairs (VA) and (for dually entitled SSI recipients) Social Security benefit systems, were not affected by the suspension of certain actions during the pandemic period, even if beneficiaries incurred the debts during the pandemic period and in the same manner as some in the manually processed group. Therefore, these overpayment debts will be subject to our existing overpayment debt waiver process. For example, an SSI recipient failed to timely report receipt of VA compensation (not based on need) that began in March 2020, during the pandemic period. In July 2020, we identified the receipt VA compensation through our automated processes and updated to the SSI record, creating an overpayment in the pandemic period. In this example, the overpayment debt will be subject to our existing overpayment debt waiver process.

Beginning on August 31, 2020, we intend to resume workloads that we suspended beginning in mid-March 2020. As we process the suspended workloads, we anticipate

identifying a number of overpayments that we would have identified and acted on earlier had it not been for our response to the COVID-19 pandemic. Because of our delay in acting, it is probable that the resulting overpayment debts may be larger in amount and greater in number than they would otherwise have been through no fault of the affected beneficiaries.

Overpayment debts incurred during the pandemic period between March 1, 2020 and September 30, 2020 may be directly the result of the COVID-19 national public health emergency and our unprecedented response to it: our suspension of manually processing and collecting certain overpayment debts. The combination of the pandemic and our necessary response to it has created a set of circumstances unlike any other in the history of our programs. This unique situation affects a number of our beneficiaries and, more importantly, affects them in a uniformly detrimental manner primarily due to our reprioritizing workloads to suspend the manual processing of certain actions.

Because of the unique nature of the COVID-19 pandemic, our unprecedented response to it, and its uniform impact on this group of beneficiaries, we are revising our rules to use a simplified waiver process for affected beneficiaries who request waiver of recovery of a qualifying overpayment debt. A qualifying overpayment debt is one that accrued at any point between March 1, 2020 through September 30, 2020 and was directly impacted by our actions to defer and suspend certain workloads between March 17, 2020 and August 31, 2020. We designed this simplified waiver process to handle requests for waiver of overpayment debts efficiently and fairly, and to preserve our

agency resources for mission-critical workloads. By implementing a streamlined process for this subset of overpayment debts, we can more efficiently administratively process qualifying overpayment debts and provide relief in a timely fashion to those directly impacted by our actions.

Summary of the change

For qualifying overpayment debts -- that is, those that relate to debts incurred during the period from March 1, 2020, through September 30, 2020 (the “pandemic period”); that resulted because of our decision to defer action and suspend certain workloads; for which the beneficiary requests waiver and that we identify by December 31, 2020 -- we will:

- presume overpaid individuals are without fault in having caused the qualifying overpayment debt;
- determine that recovery of the portion of the qualifying overpayment debt incurred during the pandemic period would be against equity and good conscience; and
- waive recovery of the portion of a qualifying overpayment debt incurred during the pandemic period.

For purposes of this interim final rule, we “identify” an overpayment debt when we discover the overpayment debt and initiate action to recover it.

We will not apply this streamlined waiver process to overpayment debts resulting from fraud or similar fault or involving misuse of benefits by a representative payee.

As we previously stated, actions that we took based on our automated processes will not qualify for this streamlined waiver process. In such cases, since we were not the cause of a delay in overpayment debts being assessed, and since we did not thus cause an increase in the amount of the overpayment debt, we are not including such actions in this special streamlined waiver process. However, in these cases, beneficiaries may request waiver of recovery of the overpayment debts through our existing processes, and we will develop the financial and other information needed to determine whether the individual qualifies for waiver under our existing regulations.³

We chose these dates for several reasons. SSA began its pandemic response activities in mid-March 2020, but we are using March 1, 2020, as the start date for the waiver period, as we assess actions on a monthly basis. Accordingly, if SSA stopped certain actions in mid-March 2020, it actually affects payments for the entire month of March 2020. We are resuming normal workload processing on August 31, but the systems cutoff date to affect September payments occurs the third week of August. Since the agency will resume workload processing on August 31, overpayments will have already accrued for the month of September, so it is appropriate for the period of this regulation's waiver to extend through September 30.

If the overpayment debt relates to a period that began before March 1, 2020 or after September 30, 2020 and includes all or part of the pandemic period, only the portion

³ See 20 CFR 404.506(c), 408.910, and 416.550.

of the qualifying overpayment debt attributable to months during the pandemic period qualifies for the streamlined waiver process under this interim final rule. For the remainder of the overpayment debt, the individual retains the right to appeal our determination regarding the fact and amount of the overpayment, or request waiver of recovery of the overpayment debt under our existing regulations.

Additionally, auxiliary beneficiaries under our title II programs may also be eligible for streamlined waiver of overpayment debts during the pandemic period, even if the primary beneficiary incurred an overpayment debt that is not eligible for streamlined waiver. For example, if a primary beneficiary incurred an overpayment debt due to what is found to be fraud, that person would not be eligible for a streamlined waiver under this interim final rule. However, if that person had an auxiliary beneficiary, the auxiliary beneficiary, unlike the primary beneficiary, may be eligible for this overpayment waiver.

Finally, under this interim final rule, we will not issue refunds outside of our normal debt waiver processes for overpayment debt recoveries that occurred during the pandemic period. If a beneficiary or recipient had benefits withheld during the pandemic period, or if we have already begun to withhold benefits due to an overpayment debt that accrued in part or in whole during the pandemic period, we will not issue refunds under this interim final rule, because these actions are not within the scope of this interim final rule. Those beneficiaries had their overpayment debts and related waiver requests handled in the usual course of business, and we did not cause or increase the overpayment debt by our decision to suspend processing of certain workloads.

This interim final rule will apply to qualifying overpayment debts that we identify by December 31, 2020. We estimate that a December 31, 2020 cut-off will allow us sufficient time to identify all the qualifying overpayments that we held during the pandemic period. When we review a beneficiary's case and find that it occurred during the pandemic period, we will annotate it with a special code. That code will help ensure that we know this case should be evaluated under the interim final rule.

An example of how this would work in practice: in April 2020, we received evidence reflecting an increase in income for an SSI beneficiary, and we determined that the beneficiary's payments should in fact be lower based on the updated income information. However, we did not process the actual change in payment from April 2020 until the present, because we had suspended such actions during the pandemic period. Because we held this case until we resumed processing such actions in September 2020, and it was through no fault of the beneficiary's that they received overpayment amounts during the pandemic period, it would be considered a qualifying overpayment debt under the interim final rule.

An example of a situation that would not apply under the interim final rule: If we received evidence in January 2021 reflecting an increase in income for an SSI beneficiary that first began in April 2020, this SSI beneficiary would not qualify for the special waiver. Because we were not working on the case throughout the pandemic period and, accordingly, we were not holding our processing of the increased income amount, our actions were not responsible for the accrual of overpayment debt, so the debt does not

qualify for this special waiver process. As always, of course, the beneficiary may still be considered for a waiver under our existing waiver process.

We chose to apply the streamlined waiver process to qualifying overpayment debts we identify by December 31, 2020 to fulfill our obligation under the Act to ensure effective and responsible stewardship of the Social Security programs. Including the time limitation appropriately balances our stewardship obligation with the needs of beneficiaries who rely on our programs. We also chose the December 31, 2020 cutoff date because it limits the amount of time we have to apply two separate overpayment debt business processes; extending the period indefinitely would exacerbate that operational issue. We also gain administrative efficiencies by applying a single waiver of overpayment debt recovery rule to the qualifying subset of all incurred payments during the period, and the effect of those efficiencies is lessened when we follow multiple processes for an extended period. We need to operate efficiently because we expect -- due to resuming the workloads we suspended in March 2020 -- to have to process a significantly higher amount of work over the coming months than comparable periods in the past. In light of these reasons, we believe the appropriate cutoff date for identifying qualifying overpayment debts is December 31, 2020.

Effective August 31, 2020, language in our overpayment notices will direct beneficiaries to contact their local Field Office with any questions about their overpayment, or to request an overpayment waiver. Field Office technicians will review the beneficiary's record to determine if the overpayment qualifies for a streamlined waiver, and if so, will

document the request for waiver on an electronic Report of Contact (SSA-5002) and attest to the beneficiary's signature. Under the streamlined process, the beneficiary will not be required to complete the full form SSA-632 or provide supporting information about his or her income and expenses to make the waiver determination for the qualified debt. SSA will terminate the language in the overpayment notices effective December 31, 2020.

Difference from Current Policy

Under sections 204(a) and 1631(b)(1)(A) of the Act,⁴ the Commissioner "shall" seek repayment of overpayment debts, by one or more of the methods listed in each section, unless waiver of recovery of the overpayment debt is appropriate. Consequently, we must seek repayments of overpayment debts made under both title II and title XVI of the Act, unless the circumstances of the overpaid individual satisfy the waiver criteria set out in sections 204(b) or 1631(b)(1)(B) of the Act.⁵ Under sections 204(b) and 1631(b)(1)(B) of the Act, we waive recovery of an overpayment debt when the overpaid individual is without fault in causing the overpayment debt and adjustment or recovery would defeat the purpose of the statute, or would be against equity and good conscience, or, for title XVI overpayment debts only, would impede the efficient or effective administration of title XVI. These statutory criteria are broadly worded and provide us with considerable latitude to determine when it would be appropriate for us to waive recovery of an overpayment debt and to determine the process that we use to waive

⁴ 42 U.S.C. 404(a) and 1383(b)(1)(A).

⁵ 42 U.S.C. 404(b) and 1383(b)(1)(B).

recovery of overpayment debts.

Under the current regulations and our internal agency instructions, before we can waive recovery of an overpayment debt, we must document any request for waiver, and develop any allegations an individual raises in the waiver request.⁶ We must obtain sufficient information to clarify issues of fault, and then often consider the individual's ability to repay and issues of equity, each of which may require the overpaid individual to submit additional documentation as evidence. We must review the evidence and first determine whether the individual is without fault in causing the overpayment and meets at least one of the other requirements for waiver specified in the Act and regulations.

The other requirements for waiver shared by titles II, VIII, XVI are that recovery would defeat the purpose of the program or be against equity and good conscience. To determine if recovery of an overpayment debt is against equity and good conscience, our current regulations require us to develop information that an individual changed his or her position for the worse or relinquished a valuable right because of reliance upon a notice that a payment would be made or because of the overpayment debt itself.⁷ Generally, when an individual requests waiver, we request and review information the individual provided us in order to determine whether the individual is without fault in causing the overpayment and that recovery would either defeat the purpose of the

⁶ See 20 CFR 404.506(c), 408.910, and 416.550 and POMS GN 02201.021, GN 02201.021, GN 02201.023, GN 02250.230, GN 02250.244, GN 02250.400, GN 02250.255, SI 02260.001, SI 02260.005, SI 02260.010, SI 02260.020, and VB 02205.310SI 02260.025.

⁷ See 20 CFR 404.509; 408.914, 416.554 and POMS GN 02250.150, and SI 02260.025, VB 02005.330.

program or be against equity and conscience.⁸ If we are unable to grant a waiver based upon review of the information available, we offer the person the opportunity for a file review so that the individual can review the file and applicable law and regulations with one of our representatives, who is prepared to answer questions.⁹ Individuals also have the right to have a personal conference, where the person may offer further explanation and documentation to a decision maker.¹⁰ This interim final rule does not change the formal aspects of requesting a waiver for overpayment debt, insofar as the beneficiary will continue to be able to contact SSA to initiate the process, the same waiver request application will be used, and when waivers are issued they will be communicated to beneficiaries in the same manner. However, when a beneficiary calls their local field office to request a waiver, if the overpayment is covered under this interim final rule, the agency will ask the beneficiary to provide less information than is normally required to adjudicate an overpayment waiver decision, such as information about a beneficiary's income, expenses, assets, and use of overpayment funds. Beneficiaries covered under this interim final rule should normally expect to be able to provide the necessary information over the phone while guided by our employees and without doing anything differently in advance of the call.

Under this interim final rule, we will use a streamlined waiver process for qualifying overpayment debts. Qualifying overpayment debts include debts accrued during the pandemic period because of our decision to defer action and suspend certain

⁸ See 20 CFR 404.506 and 416.557.

⁹ 20 CFR 404.506(c) and (d) and 416.577(a) and (b); POMS GN 02270.009, SI 02260.006, VB 02005.360.

¹⁰ See 20 CFR 404.506(e) & (f); 416.557(c) and (d); and POMS GN 02270.013, SI 02260.006, VB 02005.360.

workloads that would have otherwise allowed us to identify and take appropriate action on the overpayments. Under this interim final rule, we will presume that the overpaid individual was without fault in causing the qualifying overpayment debt, subject to limited exclusions discussed above for overpayment debts that resulted from fraud or similar fault or misuse of benefits by a representative payee. Therefore, due to the no fault presumption, we will not fully develop the issue of fault. If we presume that the overpaid individual is without fault, we will determine that recovery of the overpayment debt would be against equity and good conscience without requiring the beneficiary or recipient to specifically show that he or she relinquished a valuable right or changed position, in reliance on the overpayment debt, for the worse. For purposes of this interim final rule, we will apply a broad concept of fairness when we find that recovery of the overpayment debt would be against equity and good conscience.

REGULATORY PROCEDURES

Justification for Issuing a Rule without Notice and Comment

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)).

We find that there is good cause under 5 U.S.C. 553(b)(B) to issue this interim

final rule without prior public comment because prior public comment is impracticable and contrary to the public interest. As discussed above, this interim final rule will allow us to presume that certain individuals whose overpayment debts accrued during the March 1-September 30, 2020 COVID-19 pandemic period and that we identify by December 31 2020 were without fault in causing their overpayment debts because of our decision to suspend certain workloads and stop certain actions temporarily. The rule also allows us to apply a streamlined waiver process to decide waiver requests from these individuals. In the absence of this rule, our existing regulations would require us to continue to fully develop requests for waiver of these overpayment debts.

We find that public comment is impracticable because the delay associated with the public comment process would impede our ability to resume more normal operations. The delay associated with the public comment process would also impede our ability to operate because it would require us to continue to use our administrative resources to develop overpayment debt waiver requests for overpayments that we can readily presume were not the fault of the affected individuals. Applying our normal overpayment debt processes to these overpayment debts -- rather than the streamlined processes in the interim final rule -- would prevent us from using those administrative resources to perform other time sensitive and mission critical workloads that we deferred during the pandemic period. Enhancing our ability to perform these other critical workloads by forgoing public comment on this rule will allow us to begin to operate more normally and serve the interests of all beneficiaries, who are entitled to timely and responsive service from us, even during these unprecedented circumstances.

We also find that delaying this interim final rule to obtain public comment would be contrary to the public interest. A delay in implementation would burden the affected beneficiaries, who will receive notices of overpayment debts when we begin resuming normal workloads, and require them to prove the requirements for waiver by submitting the necessary evidence for us to consider. The delay associated with a public comment period would also be contrary to the public interest because it would reduce the effectiveness of the rule and the streamlined waiver process we are establishing. We are finalizing this rule before we resume the workloads that we suspended in March 2020 and begin assessing overpayment debts incurred during the pandemic period. If we delayed resuming our suspended workloads in order to obtain public comment on the rule, beneficiaries may incur a greater amount of overpayment debt than they would under the streamlined waiver process we are establishing. Prior public comment would therefore defeat the purpose of this rule, which is to provide effective and timely relief and ensure economic security to overpaid individuals affected by our actions to reprioritize our workloads to stop certain actions during the pandemic period. We thus find that it would be contrary to the public interest to obtain public comment and delay our ability to waive these overpayment debts, which were not the fault of the affected individuals.

In addition, for the reasons cited above, we find good cause for dispensing with the 30-day delay in the effective date of this rule provided for in 5 U.S.C. 553(d)(3). So, we are making this interim final rule effective upon publication.

Although we are making this interim final rule effective on publication, we invite public comment on all aspects of the interim final rule. We will consider any substantive comments we receive within 60 days of the publication of this interim final rule and will issue a revised final rule if necessary after we consider the public comments.

Executive Order 12866, as Supplemented by Executive Order 13563

We have consulted with the Office of Management and Budget (OMB) and determined that this interim final rule meets the criteria for a significant regulatory action under Executive Order 12866 and is subject to OMB review.

Anticipated Costs to Our Programs:

Our Office of the Chief Actuary estimates that implementing this interim final rule will result in a reduction in recovered overpayment debts of approximately \$238 million over FYs 2020-30, \$157 million for the OASDI program and \$80 million for the Federal SSI program.

Anticipated Administrative Savings to SSA in FY 2021:

Our Office of Budget, Finance, and Management estimates that this change will result in net administrative savings to the agency of up to 220 workyears and \$20 million to resume processing actions for these overpayment debts. To arrive at our estimate, we estimate an additional 5 minutes per action resumed to identify whether the overpayment

falls within the COVID period for purposes of the final rule, offset by savings of 30 minutes to waive the overpayments for those requesting relief. We expect to realize the entirety of the net savings in FY 2021.

Executive Order 13132 (Federalism)

We analyzed this rule in accordance with the principles and criteria established by Executive Order 13132, and determined that the interim final rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment. We also determined that this interim final rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that this interim final rule will not have a significant economic impact on a substantial number of small entities, because it affects only individuals. Therefore, a Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

EO 13771

This interim final rule is a deregulatory action, because it results in administrative cost savings, as well as burden reduction for the public.

Paperwork Reduction Act (PRA)

We maintain existing OMB PRA-approved information collection tools relating to

this interim final rule: the Request for Waiver of Overpayment Recovery (Form SSA-632-BK, OMB No. 0960-0037), which respondents use to request a waiver; and the Important Information About Your Appeal, Waiver Rights, and Repayment (Form SSA-3105, OMB No. 0960-0779), which respondents use to inform us that they may want to request an appeal or request a change in repayment rate of an overpayment. We do not plan to make any revisions to these forms due to this interim final rule.

While we do not plan to make any revisions to these forms, we will not need to ask all of the information on form SSA-632 (OMB No. 0960-0037) from respondents who contact us regarding overpayment waivers, and whose overpayments ultimately prove to be affected by this rule. As discussed in the preamble, SSA expects that for respondents covered under this IFR, the agency will not ask respondents questions regarding income, assets, expenses, or information about receiving the overpayment that may normally be pertinent for adjudicating a request for waiving overpayment debt. In a typical change to an information collection, we would provide a different, reduced burden estimate for these respondents. However, the burden range already reported in the OMB-approved information collection request (ICR) is so wide -5 to 120 minutes- that we see no need to calculate a new burden, as the respondents affected by this regulation would certainly fall within that range. In addition, while this interim final rule allows us to use a streamlined waiver for qualifying overpayment debts, we do not anticipate receiving, on an annual basis, more waiver requests in total than we normally receive. Finally, because we do not know the number of affected respondents (having not yet examined the universe of possible cases), that is also not a factor that would result in burden recalculation. Ultimately, though, because the burden we already report for the 0960-0037 ICR includes all of those

respondents anyway, that too does not require a new burden calculation.

Accordingly, we are not soliciting public comment under the PRA on these ICs. However, upon publication of this interim final rule, we will submit a non-substantive change request to OMB (viewable to the public) to document the temporary, short-term, COVID-related change in criteria we will use for affected respondents.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security – Disability Insurance; 96.002, Social Security – Retirement Insurance; 96.004, Social Security – Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Aged, Alimony, Blind, Disability benefits, Government employees, Income taxes, Individuals with disabilities, Insurance, Investigations, Penalties, Railroad retirement, Reporting and recordkeeping requirements, Social security, Travel and transportation expenses, Treaties, Veterans, Vocational rehabilitation.

20 CFR Part 408

Administrative practice and procedure, Aged, Reporting and recordkeeping requirements, Social security, Supplemental Security Income (SSI), Veterans.

20 CFR Part 416

Administrative practice and procedure, Aged, Alcoholism, Blind, Disability benefits, Drug abuse, Investigations, Medicaid, Penalties, Public assistance programs, Reporting and recordkeeping requirements, Social security, Supplemental Security Income (SSI), Travel and transportation expenses, Vocational rehabilitation.

The Commissioner of Social Security, Andrew Saul, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for the Social Security Administration, for purposes of publication in the Federal Register.

Faye I. Lipsky,
Federal Register Liaison,
Office of Legislative and Congressional Affairs,
Social Security Administration

For the reasons stated in the preamble, we are amending subpart F of part 404, subpart I of part 408, and subpart E of part 416 of title 20 of the Code of Federal Regulations as set forth below:

Part 404--FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE
(1950--)

Subpart F—Overpayments, Underpayments, Waiver of Adjustment or Recovery of Overpayments, and Liability of a Certifying Officer

1. The authority citation for subpart F of part 404 continues to read as follows:

Authority: Secs. 204, 205(a), 702(a)(5), and 1147 of the Social Security Act (42 U.S.C. 404, 405(a), 902(a)(5), and 1320b-17); 31 U.S.C. 3711; 31 U.S.C. 3716; 31 U.S.C. 3720A.

2. Amend §404.501 by adding a sentence after the second sentence in paragraph (a) introductory text to read as follows:

§404.501 General applicability of section 204 of the Act.

- (a) *** The term *pandemic period* as used throughout this subpart for the purposes of the waiver authority in §404.506(b) refers exclusively to the period of time beginning on March 1, 2020, and ending on September 30, 2020. ***

3. Amend §404.506 by:
 - a. Redesignating paragraphs (b) through (h) as paragraphs (c) through (i);
and
 - b. Adding a new paragraph (b).

The addition reads as follows:

§404.506 When waiver may be applied and how to process the request.

(b) We will apply the procedures in this paragraph (b) when an individual requests waiver of all or part of a qualifying overpayment.

(1) For purposes of this paragraph (b), a qualifying overpayment is one that accrued during the *pandemic period* (see §404.501(a)) because of the actions that we took in response to the COVID-19 national public health emergency, including the suspension of certain of our manual workloads that would have processed actions identifying and stopping certain overpayments.

(2) Notwithstanding any other provision of this subpart, we will presume that an individual who requests waiver of a qualifying overpayment is without fault in causing the overpayment (see §404.507) unless we determine that the qualifying overpayment made to a beneficiary or a representative payee was the result of fraud or similar fault or involved misuse of benefits by a representative payee (see §404.2041).

(3) If we determine under paragraph (b)(2) of this section that an individual or a representative payee is without fault in causing a qualifying overpayment we will also determine that recovery of the qualifying overpayment would be against equity and good conscience. For purposes of this paragraph (b)(3) only, “against equity and good conscience” is not limited to the meaning used in §404.509 but means a broad concept of fairness that takes into account all of the facts and circumstances of the case.

(4) If we determine that a primary beneficiary is not without fault with respect to a

qualifying overpayment under paragraph (b)(2) of this section, because it was caused by fraud or similar fault or because of representative payee misuse, we may still find that any auxiliary beneficiaries on the primary beneficiary's record are eligible for waiver of recovery of the qualifying overpayment under this paragraph (b). If an auxiliary beneficiary requests waiver of a qualifying overpayment in accordance with this paragraph (b), we will waive recovery of the overpayment if the auxiliary beneficiary meets all of the requirements of this paragraph (b).

(5) The provisions of this paragraph (b) will apply to a qualifying overpayment identified by December 31, 2020.

4. Amend §404.507 by adding a sentence after the third sentence of the introductory text to read as follows:

§404.507 Fault.

*** Notwithstanding any other provision of this subpart, we will not determine any overpaid individual to be at fault in causing a qualifying overpayment (see §404.506(b)(1)) unless we determine that the qualifying overpayment made to a beneficiary or a representative payee during the pandemic period (see §404.501) was the result of fraud or similar fault or involved misuse of benefits by a representative payee (see §404.2041).***

PART 408 – SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

Subpart I—Underpayments and Overpayments

5. The authority citation for subpart I of part 408 continues to read as follows:

Authority: Secs. 702(a)(5), 808, and 1147 of the Social Security Act (42 U.S.C. 902(a)(5), 1008, and 1320b-17); 31 U.S.C. 3716; 31 U.S.C. 3720A.

6. Amend §408.902 by:
 - a. Designating the paragraph as paragraph (a); and
 - b. Adding paragraph (b).

The addition read as follows:

§408.902 What is an overpayment?

* * * * *

(b) As used in this subpart, the term *pandemic period* for the purposes of the waiver authority in §408.910 refers exclusively to the period of time beginning on March 1, 2020, and ending on September 30, 2020.

7. Amend §408.910 by adding paragraph (c) to read as follows:

§408.910 When will we waive recovery of an SVB overpayment?

(c) We will apply the procedures in this paragraph (c) when an individual requests waiver of all or part of a qualifying overpayment.

(1) For purposes of this paragraph (c), a qualifying overpayment is one that accrued during the *pandemic period* (see §408.902(b)) because of the actions that we took in response to the COVID-19 national public health emergency, including the suspension of certain of our manual workloads that would have processed actions identifying and stopping certain overpayments.

(2) Notwithstanding any other provision of this subpart, we will presume that an individual who requests waiver of a qualifying overpayment is without fault in causing the overpayment (see §408.912) unless we determine that the qualifying overpayment made to a beneficiary or a representative payee was the result of fraud or similar fault or involved misuse of benefits by a representative payee (see §408.641).

(3) If we determine under paragraph (c)(2) of this section that an individual or a representative payee is without fault in causing a qualifying overpayment, we will also determine that recovery of the qualifying overpayment would be against equity and good conscience. For purposes of this paragraph (c)(3) only, “against equity and good conscience” is not limited to the meaning used in §408.914 but means a broad concept of fairness that takes into account all of the facts and circumstances of the case.

(4) The provisions of this paragraph (c) will apply to a qualifying overpayment identified by December 31, 2020.

8. Amend §408.912 by adding paragraph (c) to read as follows:

§408.912 When are you without fault regarding an overpayment?

(c) Special rule for qualifying overpayments. Notwithstanding any other provision of this subpart, we will not determine any overpaid individual to be at fault in causing a qualifying overpayment (see §408.910(c)(1)) unless we determine that the qualifying overpayment made to an individual or a representative payee during the pandemic period (see §408.902(b)) was the result of fraud or similar fault or involved misuse of benefits by a representative payee (see §408.641).

**PART 416 – SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND
DISABLED**

Subpart E—Payment of Benefits, Overpayments, and Underpayments

9. The authority citation for subpart E of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)-(d) and (g)

of the Social Security Act (42 U.S.C. 902(a)(5), 1320b-17, 1381, 1381a, 1382(c) and (e), and 1383(a)-(d) and (g)); 31 U.S.C. 3716; 31 U.S.C. 3720A.

10. Amend §416.537 by adding paragraph (c) to read as follows:

§416.537 Overpayments – defined.

(c) *Pandemic period.* As used throughout this subpart, the term *pandemic period* for the purposes of the waiver authority in §416.550 refers exclusively to the period of time beginning on March 1, 2020, and ending on September 30, 2020.

11. Amend §416.550 by adding paragraph (c) to read as follows:

§416.550 Waiver of adjustment or recovery –when applicable.

(c) We will apply the procedures in this paragraph (c) when an individual requests waiver of all or part of a qualifying overpayment.

(1) For purposes of this paragraph (c), a qualifying overpayment is one that accrued during the *pandemic period* (see §416.537(c)) because of the actions that we took in response to the COVID-19 national public health emergency, including the suspension

of certain of our manual workloads that would have processed actions identifying and stopping certain overpayments.

(2) Notwithstanding any other provision of this subpart, we will presume that an individual who requests waiver of a qualifying overpayment is without fault in causing the overpayment (see §416.552) unless we determine that the qualifying overpayment made to a beneficiary or a representative payee was the result of fraud or similar fault or involved misuse of benefits by a representative payee (see §416.641).

(3) If we determine under paragraph (c)(2) of this section that an individual or a representative payee is without fault in causing a qualifying overpayment, we will also determine that recovery of the qualifying overpayment would be against equity and good conscience. For purposes of this paragraph (c)(3) only, “against equity and good conscience” is not limited to the meaning used in §416.554 but means a broad concept of fairness that takes into account all of the facts and circumstances of the case.

(4) The provisions of this paragraph (c)(4) will apply to a qualifying overpayment identified by December 31, 2020.

12. Amend §416.552 by adding a sentence following the second sentence of the introductory text to read as follows:

§416.552 Waiver of adjustment or recovery –without fault.

*** Notwithstanding any other provision of this subpart, we will not determine any

overpaid individual to be at fault in causing a qualifying overpayment (see §416.550(c)(1)) unless we determine that the qualifying overpayment made to an individual or a representative payee during the pandemic period (see §416.537(c)) was the result of fraud or similar fault or involved misuse of benefits by a representative payee (see §416.641). ***

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